

OPINION No. 21/2007 (Egypt)

Communication addressed to the Government on 7 February 2007.

Concerning Mr. Yasser Essayed Chaabane Al Dib and 18 other persons.

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 14/2007.)
2. The Working Group conveys its appreciation to the Government for having provided it with information concerning the allegations of the source.
3. (Same text as paragraph 3 of Opinion No. 15/2007.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments.
5. According to the source, the following 19 persons were arrested in the course of 1996 by agents of the State Security Intelligence (SSI). Upon their arrest, they were held incommunicado for periods ranging from one to three months during which they were allegedly tortured. At the time of the arrest, the officials did not show any arrest warrant or other relevant decision by a public authority, nor did they orally inform them about the reasons for their arrest. They continue to be kept in detention. Their names and other identifying information were given as follows:

- (a) Yasser Essayed Chaabane Al Dib, aged 18, student, residing at Kerdasa, Imbada center, Muhafadat Al Gizeh, arrested on 26 February 1996, and detained at Istiqbal Tura High Security Prison;
- (b) Hanni Ibrahim Abdel Aal Ibrahim, aged 25, student, residing in Cairo, arrested on 16 May 1996, and detained at Abou Zaabel High Security Prison;
- (c) Assaad Hilmi Essayed Attiya, aged 32, farmer, residing in Assiout, arrested on 20 May 1996, and detained at Oued Al Jahid Prison;
- (d) Mohamed Hussein Mahmoud Abdelfadil, aged 28, student, residing on Ali Grib avenue, Taraat Zenine, Boulaq, Al Dakrour, Muhafadat Al Gizeh, arrested on 22 May 1996, and detained in Abou Zaabel High Security Prison;
- (e) Fethi Tantaoui Mohamed Yunes, aged 46, trader, residing at Cherchama Hahia, Al Zaqazig, Muhafadat Al Sharquia, arrested on 27 May 1996, and detained at Abou Zaabel High Security prison;
- (f) Essayed Mohamed Essayed Dahr, aged 38, teacher, residing at Al Mutawaa, Al Zaqaziq, Muhafadat Al Sharquia, arrested on 27 May 1996, and detained at Abou Zaabel High Security Prison;
- (g) Imadeddine Mustapha Mohamed Marsa, aged 38, trader, residing at Al Mutawaa, Al Zaqaziq, Muhafadat Al Sharquia, arrested on 27 May 1996, and detained at Abou Zaabel High Security Prison;
- (h) Ibrahim Mohamed Barakat Al Nahas, aged 36, trader, residing on 14, Avenue Difallah, Meydane Al Khalfaoui, Chabrah in Cairo, arrested on 30 May 1996, and detained at Istiqbal Tura High Security Prison;
- (i) Aymen Said Djaballah Attiya, aged 36, trader, residing at al Chibanete, Al Zaqazig, Muhafadat Al Sharquia, arrested on 30 May 1996, and detained at Abou Zaabel High Security Prison;
- (j) Assadaq Mohamed Mohamed Assadaq, aged 50, public servant, residing at Al Mutawaa, Al Zafazif, Muhafadat Al Sharquia, arrested on 30 May 1996, and detained at Abou Zaabel High Security Prison;
- (k) Magdy Samy Mohamed, aged 34, trader, residing at Al Chebanate, Al Zaqaziq, Muhafadat Al Sharquia, arrested on 30 May 1996, and detained at Abou Zaabel High Security Prison;
- (l) Mohamed Khellil Djaballah Attiya, aged 46, trader, residing at Al Chebanate, Al Zaqaziq, Muhafadat Al Sharquia, arrested on 30 May 1996, and detained at Abou Zaabel High Security Prison;
- (m) Mohamed Samy Mohamed Al Kilani, aged 28, employee in a public company, residing at Markez Wassim, Bartos, Muhafadat Gizeh, arrested on 25 May 1996, and detained in Istiqbal Tura High Security Prison;
- (n) Saad Mabrouk Abou Sariee, aged 20, trader, residing at Center Imbaba, Kerdasa, Muhafadat Gizeh, arrested on 15 June 1996, and detained at Al Fayoum Prison;
- (o) Gamal Ali Assyed Salim, aged 42, teacher, residing at Al Chebanate, Al Zaqaziq, Muhafadat Al Sharquia, arrested on 20 June 1996, and detained at Abou Zaabel High Security Prison;

(p) Khaled Ibrahim Mohamed Salama, aged 29, State officer, residing at Al Chebanate, Al Zaqaqiq, Muhafadat Al Sharquia, arrested on 20 August 1996, and detained in Abou Zaabel High Security prison;

(q) Nada Qarni Ibrahim Mohamed Hassane, aged 38, agricultural engineer, residing in Dahal, Samssata, Beni Souif, arrested on 16 October 1996, and detained in Oued Al Natroune Prison;

(r) Ahmed Eid Mutawally Hassane, aged 33, trader, residing on 175 Avenue Ali Abdel Aal-Zaky Matar, Imbaba, Muhafadat Al Gizeh, and detained in Abou Zaabel High Security Prison;

(s) Ramadhan Eid Ahmed Al Abd, aged 31, trader, residing at Sounouras, Al Siliyine, Al Fayoum, arrested on 22 December 1996, and detained in Oued Al Natroune Prison;

6. At the end of their incommunicado detention, these persons were informed that they would be imprisoned by virtue of an administrative order issued by the Minister of the Interior. No detention term was fixed. These administrative orders were issued following the regulations on the state of emergency which have been in force without interruption since 6 October 1981. It was reported that the emergency regulations were extended on 30 April 2006 for another three years.

7. The regulations on the state of emergency are based on the Emergency Law, Law No. 162 of 1958, which permits arrest and indefinite detention without trial. The source considers that it creates an atmosphere of impunity which may give place to cases of torture and other forms of ill-treatment.

8. All detainees were able to challenge their detention before a competent judicial authority, which ordered, in all cases, their release. However, the Ministry of the Interior ignored these rulings, failed to release the detainees and subsequently issued new administrative detention orders pursuant to the Emergency Law.

9. Egypt is a State party of the International Covenant on Civil and Political Rights. It has not informed the other State parties that it avails itself of its right of derogation, according to article 4 of the Covenant.

10. According to the source, the above-mentioned persons are being kept in detention without charges or trial exclusively under administrative detention powers. They have never been tried or convicted of a crime. Their interrogation with the State Security Intelligence related to their political beliefs, or their real or supposedly allegiance to banned Islamist groups. They have furthermore never participated in any acts of violence, because if they had, the detainees would have been brought before military or exceptional courts and would have been charged and tried.

11. The source argues that the detention of these persons is arbitrary, inter alia, because it is devoid of any legal basis. Article 3 of the Emergency Law stipulates that the President of the Republic may take appropriate measures to maintain security and public order through imposing restrictions on individuals' freedom such as administration detentions of suspects without trial for prolonged periods. Such administrative detention orders are issued without any control by the judicial authority or the Prosecutor's office. A complex process to challenge these administrative measures before the courts is provided by the Law. But all the

judicial rulings ordering the release of the said detainees were made vain by new administration detention orders, making the judicial control over legality of detention futile. Hence, according to the source, the deprivation of liberty of the 19 above-mentioned detainees is devoid of a legal basis since the Egyptian courts have ordered their release.

12. The source adds that numerous international human rights bodies, including the Human Rights Committee, have expressed their concern about the circumstance that the emergency laws enacted in 1981 in Egypt are still in force, as well as about the impact these laws have on the enjoyment of the rights protected under articles 6, 7, 9 and 14 of the Covenant.

13. The source further argues that the detention of the 19 persons results from their political opinions and the consequent exercise of their rights to freedom of expression, guaranteed by article 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights.

14. In its reply to the allegations of the source the Government states that “the elements named in the complaint belonged to extremist groups which carried out a number of terrorist operations in Egypt in the 1990s”. It added that “preventive measures were taken vis-à-vis these elements, in accordance with the Emergency Act No. 162 of 1958, in order to avert the criminal threat that they posed and to prevent them from realizing their terrorist designs. The Ministry of the Interior complied with court orders providing for the release of some of these elements. However, follow-up inquiries by the security forces revealed that the elements in question remained committed to their extremist ideas and thus posed a threat to stability and public security. Preventive measures were therefore reapplied in their regard. The Government pointed out that “this is not incompatible with the law. A total of 15 of the above-mentioned elements were released after they were found to have moderated their views and to no longer pose a criminal threat. The four remaining elements (Yasser Essayed Chaabane Al Dib, Aymen Said Djaballah Attiya, Assadaq Mohamed Mohamed Assadaq and Gamal Ali Assyed Salim) were released. However, follow-up investigations revealed that they had resumed their criminal activities with a view to realizing their terrorist designs. Preventive measures were therefore applied in their regard.”

15. In its comments to the Government’s observations, the source confirms that all except Messrs. Yasser Essayed Chaabane Al Dib, Aymen Said Djaballah Attiya, Assadaq Mohamed Mohamed Assadaq and Gamal Ali Assyed Salim were released on 23 July 2007. However, it stresses that they had been detained without judgment or without a judicial procedure for 11 years. As for the other four, the source maintains that they have never been released. They were transferred during the last week of July 2007 from their place of detention to the premises of the SSI where they were subjected to further days of incommunicado detention and interrogation concerning their political convictions. Thereafter, they were transferred back to prison where they continue to be detained by virtue of an administrative decision of the Minister of the Interior. The assertion of the Government according to which they were subjected to surveillance by the police following their alleged release, which established their involvement in criminal activities, is bereft of any basis according to the source.

16. Having assessed all information before it, the Working Group decides that the cases of Messrs. Hanni Ibrahim Abdel Aal Ibrahim, Assaad Hilmi Essayed Attiya, Mohamed Hussein Mahmoud Abdelfadil, Fethi Tantaoui Mohamed Yunes, Essayed Mohamed Essayed Dahr, Imadeddine Mustapha Mohamed Marsa, Ibrahim Mohamed Barakat Al Nahas, Magdy Samy Mohamed, Mohamed Khellil Djaballah Attiya, Mohamed Samy Mohamed Al Kilani, Saad Mabrouk Abou Sariee, Khaled Ibrahim Mohamed Salama, Nada Qarni Ibrahim Mohamed Hassane, Ahmed Eid Mutawally Hassane, and Ramadhan Eid Ahmed Al Abd are serious cases of deprivation of liberty. Consequently, acting in accordance with its Methods of Work, paragraph 17 (a), reserves the right to render an opinion, notwithstanding the information received from the Government about their release, which has been confirmed by the source of the communication.

17. Concerning them and also concerning the further four individuals who are the subject matter of this opinion, Messrs. Yasser Essayed Chaabane Al Dib, Aymen Said Djaballah Attiya, Assadaq Mohamed Mohamed Assadaq, and Gamal Ali Assyed Salim, the Working Group observes that it is undisputed that they were arrested without a warrant between February and December 1996 by members of the SSI and were held in incommunicado detention for periods of one to three months during which they were tortured. Furthermore, the Government has not challenged the allegations of the source that the individuals concerned have been detained for a considerable period of about 11 years without charges or trial exclusively under administrative detention powers. According to the information received from the source, which have not been disputed by the Government, all of them were able to challenge the lawfulness of their detention before a competent judicial authority, which ordered their respective releases. As the allegations by the source have not been refuted by the Government, the Working Group considers them to be well-founded.

18. The Working Group observes that there are different accounts by the Government and the source regarding the fact as to whether Messrs. Yasser Essayed Chaabane Al Dib, Aymen Said Djaballah Attiya, Assadaq Mohamed Mohamed Assadaq, and Gamal Ali Assyed Salim were released briefly complying with court orders and re-arrested, or whether they have never been freed since their arrests in contempt of court decisions. It does not seem necessary to definitely decide this question.

19. The Working Group has on earlier occasions³ considered that maintaining a person in administrative detention once his release has been ordered by the court competent to exercise control over the legality of detention, renders the deprivation of liberty arbitrary. The Working Group is of the opinion that, in such cases, no legal basis can be invoked to justify the detention, least of all an administrative order issued to circumvent a judicial decision ordering the release. Since it transpires already from the Government's reply that these four individuals would have been re-arrested for the same reasons for which they had been detained for a period of up to 11 years without charge or trial, it does not make any difference for the classification of these cases under category I whether Messrs. Yasser Essayed

³ Opinion No. 5/2005 (Egypt), paragraph 19 (E/CN.4/2006/7/Add.1), Decision No. 45/1995 (Egypt), paragraph 6 (E/CN.4/1997/4/Add.1), and Decision No. 61/1993 (Egypt), paragraph 6 (E/CN.4/1995/31/Add.1). See also Opinion No. 3/2003 (Egypt) (E/CN.4/2004/3/Add.1).

Chaabane Al Dib, Aymen Said Djaballah Attiya, Assadaq Mohamed Mohamed Assadaq, and Gamal Ali Assyed Salim had been briefly released or have simply continued to remain in custody despite a court order to the contrary.

20. Concerning the remaining 15 individuals who are the subject matter of this opinion, the same observations apply. 11 years of administrative detention without charge or trial and despite a court order are considered to be unjustifiably excessive by the Working Group.

21. It is the position of the Working Group that not even a state of emergency may justify such long administrative detentions and the non-observance of the guarantees of a fair trial. Insofar the Working Group concurs with the position taken by the Human Rights Committee in its general comment No. 29 (2001) that the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during the state of emergency and that in order to protect non-derogable rights, the right to take proceedings before a court and to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party's decision to derogate from the Covenant. This implies that release orders of courts competent to exercise control over the legality of detention must be honoured by the Government even in a state of emergency. The Working Group concludes that the continued deprivation of liberty of Messrs. Yasser Essayed Chaabane Al Dib, Aymen Said Djaballah Attiya, Assadaq Mohamed Mohamed Assadaq, and Gamal Ali Assyed Salim is arbitrary and that the detention of the 15 remaining individuals was arbitrary between their respective dates of arrests and their release on 23 July 2007, being devoid of any legal basis (category I).

22. Furthermore, the Government has not further specified what crimes the holding of "extremist ideas" may constitute and in what way the activities of Messrs. Yasser Essayed Chaabane Al Dib, Aymen Said Djaballah Attiya, Assadaq Mohamed Mohamed Assadaq, and Gamal Ali Assyed Salim pose a threat to the stability and public security of the country. Such allegations are inconclusive if the individuals concerned are unaware of what exact crimes they are accused of, especially in view of courts' orders for their release. In the absence of such specifications the Working Group has no reason to question the allegation of the source that their detention is solely connected to the exercise of their right to freedom of opinion and expression as guaranteed by article 19 of the International Covenant on Civil and Political Rights. With respect to the 15 individuals who were released the Government furthermore confirms implicitly that they had been detained solely for holding specific views since they were released after they were found to have moderated them. The Working Group considers that expressing opinions which are not in conformity with government views and policies is a legitimate exercise of the right to freedom of opinion and expression. The deprivation of liberty of the 19 individuals solely for dissenting opinions, thus, falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

23. In the light of the foregoing, the Working Group renders the following Opinion:

(a) The deprivation of liberty of Messrs. Hanni Ibrahim Abdel Aal Ibrahim, Assaad Hilmi Essayed Attiya, Mohamed Hussein Mahmoud Abdelfadil, Fethi Tantaoui Mohamed Yunes, Essayed Mohamed Essayed Dahr, Imadeddine Mustapha

Mohamed Marsa, Ibrahim Mohamed Barakat Al Nahas, Magdy Samy Mohamed, Mohamed Khellil Djaballah Attiya, Mohamed Samy Mohamed Al Kilani, Saad Mabrouk Abou Sariee, Khaled Ibrahim Mohamed Salama, Nada Qarni Ibrahim Mohamed Hassane, Ahmed Eid Mutawally Hassane, and Ramadhan Eid Ahmed Al Abd was arbitrary between the respective dates of their arrests in 1996 and their release on 23 July 2007, being in contravention of articles 9 and 19 of the International Covenant on Civil and Political Rights, to which Egypt is a party, and falls within categories I and II of the categories applicable to the consideration of the cases submitted to the Working Group.

(b) The continued deprivation of liberty of Messrs. Yasser Essayed Chaabane Al Dib, Aymen Said Djaballah Attiya, Assadaq Mohamed Mohamed Assadaq, and Gamal Ali Assyed Salim, who remain in detention, is arbitrary, being in contravention of articles 9 and 19 of the International Covenant on Civil and Political Rights, to which Egypt is a party, and falls within categories I and II of the categories applicable to the consideration of the cases submitted to the Working Group.

24. Having found the detention of the above mentioned individuals to be arbitrary, the Working Group requests the Government to take the necessary steps to remedy the situation of the four individuals who are still being deprived of their liberty and bring it into conformity with the standards and principles set forth in the International Covenant on Civil and Political Rights. The Working Group believes that in view of the long period of time spent in detention the adequate remedy would be their release.

Adopted on 22 November 2007